
(2013) 06 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 3390 of 2009

Sanjay Kumar Ojha

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1), 12
Central Reserve Police Force Rules, 1955 — Rule 15

Citation : (2014) LabIC 987 : (2013) 3 PLJR 312

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Pranav Kumar and Rajeev Ranjan-I, for the Appellant; Sudhir Singh and Sarvadeo Singh, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Sri Pranav Kumar, learned counsel for the petitioner and Mr. N.A. Shamsi, learned Assistant Solicitor General, who has appeared on behalf of all the Respondents. The petitioner, who was a constable (G.D.) in Central Reserve Police Force (hereinafter referred to as "C.R.P.F."), has approached this Court with a prayer to quash office order dated 2nd November, 2007 passed by Respondent No. 4/the Commandant, 4th BN, C.R.P.F. (Annexure-3), whereby Respondent No. 4 agreeing with the report of the Conducting Officer in a Departmental Proceeding has awarded punishment of dismissal from service. The petitioner has further prayed for quashing of office order dated 2nd April, 2008 (Annexure-4) and order dated 24th September, 2008 (Annexure-5) passed by the appellate authority as well as revisional authority respectively. The appeal and revision preferred by the petitioner against the punishment of dismissal from service have also been rejected.

2. Short fact of the case is that the petitioner, Who was appointed as constable and allotted constable No. 005200541 CT/GD in C.R.P.F., was served memorandum alongwith Article of Charges on an allegation of misconduct

pertaining to solemnizing second marriage without prior permission of the authority concerned. In the charge-sheet, there were two Articles of charges but both pertain to the same charge i.e. relating to solemnizing second marriage and not intimating the authority concerned, which was considered to be misconduct as per Rule 15 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the "C.R.P.F. Rules"). The petitioner was proceeded departmentally and enquiry was conducted by the Enquiry Officer. During enquiry, charges were proved and after submission of the enquiry report, the disciplinary authority i.e. Respondent No. 4 agreeing with the enquiry report imposed punishment as indicated above.

3. Learned counsel for the petitioner submits that it is true that the petitioner had solemnized second marriage but the same was solemnized due to unavoidable circumstances with prior permission of the first wife of the petitioner. Second marriage was solemnized due to infertility of his first wife. Same stand was taken before the Conducting Officer. However, it was accepted that the fact regarding marriage was not furnished before the authority concerned by the petitioner, but this fact transpired on the complaint lodged by first father-in-law of the petitioner. Learned counsel for the petitioner submits that for the misconduct, as alleged in the present case, the punishment imposed is disproportionate and is liable to be set aside. He submits that exactly in a similar case in which C.R.P.F. personnel, who had solemnized second marriage and was also dismissed from service, had approached this Court, while invoking its writ jurisdiction by filing C.W.J.C. No. 10674 of 2002, a Bench of this Court by its order dated 24.9.2002 quashed the order of punishment of dismissal. Learned counsel for the petitioner has heavily relied on Annexure-6 to the writ petition, which is a photocopy of the order dated 24.9.2002 passed in C.W.J.C. No. 10674 of 2002 (Pramod Kumar Yadav vs. Union of India & Ors). It has been emphatically argued that as per provision contained in C.R.P.F. Act, particularly u/s 12, punishment of dismissal can be imposed only in a case of sentence of imprisonment of a member of C.R.P.F. He further submits that departmental proceeding was initiated against the petitioner in view of Section 11(1) of the C.R.P.F. Act and Rule 27 of the C.R.P.F. Rules. It has been highlighted that the heading of Section 11 of the C.R.P.F. Act refers to minor punishment. According to learned counsel for the petitioner, dismissal from service can never be treated as minor punishment, which has been clarified in Section 11 of the C.R.P.F. Act itself. According to him, in any event punishment imposed on the petitioner for the charge, which was alleged in the proceeding, is disproportionate and is required to be set aside.

4. Mr. N.A. Shamsi learned Assistant Solicitor General has vehemently opposed the prayer of the petitioner. He submits that u/s 11 of the C.R.P.F. Act, there is provision for removal also and according to him removal includes dismissal. He further submits that order passed in Pramod Kumar Yadav's case may not be considered to be an order passed in similar circumstances. He submits that order i.e. Annexure-6 to the writ petition, does not clearly explain that the case of

Pramod Kumar Yadav is similar to the case of petitioner. Alternatively, he submits that fact remains that misconduct under Rule 15 of the C.R.P.F. Rules has been established and, as such, even though if order of punishment of dismissal goes, then in that event liberty may be granted to the Respondents to impose other appropriate punishment. He has further referred to order dated 24.9.2002 passed in C.W.J.C. No. 10674 of 2002 and submits that even in the said case, this Court had granted liberty to the concerned authority to proceed afresh against the petitioner of the case in the matter in accordance with law.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is admitted position that the petitioner had solemnized second marriage. However, the punishment imposed on petitioner appears to be not in accordance with law in view of the fact that though the petitioner was proceeded u/s 11 of the C.R.P.F. Act, there was no provision for imposing punishment of dismissal from service. Moreover, this issue has already been set at rest by a Coordinate Bench of this Court in C.W.J.C. No. 10674 of 2002 on 24.9.2002. In the said case also, Pramod Kumar Yadav, who was C.R.P.F. personnel, had solemnized second marriage during lifetime of his first wife and this Court after considering the provision contained in Sections 9 and 10 of the C.R.P.F. Act and Rule 15 of C.R.P.F. Rules has set aside the order of dismissal. Before concluding, it would be appropriate to quote provision contained Sections 9, 10 and 11 of the C.R.P.F. Act, which are as follows:

9. More heinous offences.--Every member of the Force who--

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or

(c) shamefully abandons or delivers up any post or guard which is committed to his charge or which it is his duty to defend; or

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or who, while on active duty,--

(e) disobeys the lawful command of his superior officer; or

(f) deserts the Force; or

(g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or

- (h) leaves his commanding officer, or his post or party, to go in search of plunder; or
- (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or
- (k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters; or
- (l) displays cowardice in the execution of his duty, Shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months" pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

10. Less heinous offences.--Every member of the Force who--

- (a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or
- (b) strikes or attempts to force any sentry; or
- (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or without proper authority releases any person or prisoner placed under his charge, or negligently suffers any such prisoner or person to escape; or
- (d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or
- (e) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (f) refuses to superintend or assist in the making of any field-work or other work of any description ordered to be made either in quarters or in the field; or
- (g) strikes or otherwise ill-uses any member of the Force subordinate to him in rank or position; or
- (h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accoutrements, or any such articles entrusted to him or belonging to any other person; or
- (i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or
- (j) with intent to render himself or any other person unfit for service, voluntarily

causes hurt to himself or any other persons; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Force forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accountrements or other property issued or supplied to him or in his custody or possession as such member; or

(l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of, or any person attached to the Force, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid; or

(m) absents himself without leave, or without sufficient cause overstays leave granted to him; or

(n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order or discipline; or

(o) contravenes any provision of this Act for which no punishment is expressly provided; or

Who, while not on active duty,--

(p) commits any of the offences specified in clauses (e) to (I) (both inclusive) of Section 9,

Shall be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to three months' pay, or with both.

11. Minor punishments.--(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal anyone or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,--

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force.

(2) Any punishment specified in clause (c) or clause (d) of sub-section (1) may be awarded by any Gazetted Officer when in command of any detachment of the Force away from headquarters, provided he is specially authorized in this behalf

by the Commandant.

(3) The Assistant Commandant, a company officer or a subordinate officer, not being below the rank of subedar or inspector, commanding a separate detachment or an outpost, or in temporary command at the headquarters of the Force, may, without a formal trial, award to any member of the Force who is for the time being subject to his authority anyone or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require prosecution before a Criminal Court, that is to say,--

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days with or without confinement to quarters, lines or camp;

(c) censure or severe censure:

Provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A jamadar or sub-inspector who is temporarily in command of a detachment or any outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in clause (b) of sub-section (3) for not more than fifteen days.

6. From perusal of the aforesaid provisions, it is evident that for heinous offences one can be punished with transportation for life or a term of not less than seven years and for less heinous offences, one can be punished for a term, which may extend to one year. Regarding minor punishment, there is nothing to suggest that one can be dismissed from service. Regarding dismissal, provision has been prescribed in Section 12 of the C.R.P.F. Act. For better appreciation, it would be necessary to quote Section 12 of the C.R.P.F. Act, which is as follows:--

12. Place of imprisonment and liability to dismissal on imprisonment.--(1) Every person sentenced under this Act to imprisonment may be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and any other moneys due to him, as well as of any medals and decorations received by him.

(2) Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court of the Commandant so directs, be confined in the quarter-guard or such other place as the Court or the Commandant may consider suitable.

7. In view of Section 12 of the C.R.P.F. Act, only in specific circumstances, one can be dismissed from service. Particularly on the charge of dual marriage, the Court is satisfied that the petitioner was not required to be imposed with the

punishment of dismissal from service. Of course, the Respondent/Union of India had tried to distinguish the case of the petitioner from the case of Pramod Kumar Yadav, but nothing has been brought on record to establish the stand. Only vague statement has been made in paragraph-26 of the counter affidavit dealing with the averments made in paragraph-13 of the writ petition. The Court is of the opinion that the case of the petitioner is almost similar to the case of Pramod Kumar Yadav, in which this Court has passed order dated 24.9.2002 in C.W.J.C. No. 10674 of 2002. Accordingly, the case of the petitioner cannot be distinguished and, as such, the relief sought for by the petitioner is required to be allowed. Accordingly, order dated 2nd November, 2007 (contained in Annexure-3 to the writ petition), order dated 2nd April, 2008 (contained in Annexure-4 to the writ petition) and order dated 24th September, 2008 (contained in Annexure-5 to the writ petition) are hereby set aside granting similar liberty to the Respondents authority to proceed afresh against the petitioner in the matter in accordance with law. With above observation and direction, the writ petition stands allowed.